



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0177/1  
PJK:lmk:rs

**SENATE SUBSTITUTE AMENDMENT 2,  
TO 2005 SENATE BILL 182**

September 20, 2005 - Offered by Senator PLALE.

1 **AN ACT to amend** 767.263 (1), 767.265 (1), 767.303 (1), 767.33 (5) (a), 767.51 (6)  
2 and 808.075 (4) (d) 4.; and **to create** 767.321 of the statutes; **relating to:**  
3 revision of child or family support when payer is called to active military duty.

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***Analysis by the Legislative Reference Bureau***

Under current law, a person who is ordered by a court to pay child or family support may have the amount of support revised if there has been a substantial change in circumstances. A substantial change in circumstances includes such events as a change in the payer's earning capacity or a change in the needs of the child. Certain events, such as the expiration of 33 months since the support order was entered or last revised, constitute rebuttable presumptions that there has been a substantial change in circumstances. Even if the court finds that there has been a substantial change in circumstances, the court is not required to revise the support amount. If the court does revise support, however, it must use the percentage standard for setting the amount or, if the court determines that using the percentage standard would be unfair to the child or either of the parties, the court may modify the amount that would result from using the percentage standard on the basis of factors set out in the statutes. (The percentage standard is a percentage of the payer's gross income. The percentage varies with the number of children for which the support is paid.)

This substitute amendment requires a court to revise the amount of child or family support that a payer is obligated to pay if the payer is a member of the national

guard or of a reserve unit of the U.S. armed forces, is called into active duty in the U.S. armed forces, and files a motion for the revision. The revised amount of support must bear the same proportion to the amount the payer is currently obligated to pay as the payer's military pay bears to the payer's income while not on active duty. Either before or during active service, the payer must file a motion for revision, along with an affidavit stating all amounts and sources of income while not on active duty and all amounts and sources of income while on active duty that are not military pay. The payer must also file with the motion if available, or as soon as practicable if not available when the motion is filed, a copy of defense financing and accounting form 702 showing his or her military pay.

The court must hold a hearing as soon as possible after the motion is filed. If the payer cannot be present, he or she may participate by telephone or interactive video and audio transmission. If, due to the nature of his or her active service, it is impossible for the payer to participate by telephone or interactive video and audio transmission, the court must grant a stay of the hearing until the payer is able to participate. Only after the payer has filed all of the necessary information and a hearing has been held may the court issue an order revising child or family support. The revision shall be effective from the date on which the payee received notice of the motion or the date on which the payer began active service, whichever is later, and remains in effect until the support amount is revised again on the basis of a motion, petition, or order to show cause. The order must also require the payer to notify the department of workforce development (DWD) and the county child support agency of the date on which he or she is discharged from active service.

The substitute amendment also prohibits DWD and any county child support agency from conducting any child or family support enforcement activities with respect to a payer who has been called to active service and whose child or family support has been revised by a court for that reason for a period of six months after the revision order has been issued. A payer may receive extensions of the six-month period, however, if he or she provides satisfactory evidence to the county child support agency that he or she is still on active duty or has been discharged from active duty for less than 90 days.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 767.263 (1) of the statutes is amended to read:

2           767.263 (1) Each order for child support, family support, or maintenance  
3 payments shall include an order that the payer and payee notify the county child  
4 support agency under s. 59.53 (5) of any change of address within 10 business days  
5 of such change. Each order for child support, family support, or maintenance

1 payments shall also include an order that the payer notify the county child support  
2 agency under s. 59.53 (5) and the payee, within 10 business days, of any change of  
3 employer and of any substantial change in the amount of his or her income, including  
4 receipt of bonus compensation, such that his or her ability to pay child support,  
5 family support, or maintenance is affected. The order shall also include a statement  
6 that clarifies that notification of any substantial change in the amount of the payer's  
7 income will not result in a change of the order unless a revision of the order under  
8 s. 767.32 or 767.321 or an annual adjustment of the child or family support amount  
9 under s. 767.33 is sought.

10 **SECTION 2.** 767.265 (1) of the statutes is amended to read:

11 767.265 (1) Each order for child support under this chapter, for maintenance  
12 payments under s. 767.23 or 767.26, for family support under this chapter, for costs  
13 ordered under s. 767.51 (3) or 767.62 (4), for support by a spouse under s. 767.02 (1)  
14 (f), or for maintenance payments under s. 767.02 (1) (g), each order for or obligation  
15 to pay the annual receiving and disbursing fee under s. 767.29 (1) (d), each order for  
16 a revision in a judgment or order with respect to child support, maintenance, or  
17 family support payments under s. 767.32 or 767.321, each stipulation approved by  
18 the court or a circuit court commissioner for child support under this chapter, and  
19 each order for child or spousal support entered under s. 948.22 (7) constitutes an  
20 assignment of all commissions, earnings, salaries, wages, pension benefits, benefits  
21 under ch. 102 or 108, lottery prizes that are payable in installments, and other money  
22 due or to be due in the future to the department or its designee. The assignment shall  
23 be for an amount sufficient to ensure payment under the order, obligation, or  
24 stipulation and to pay any arrearages due at a periodic rate not to exceed 50% of the  
25 amount of support due under the order, obligation, or stipulation so long as the

1 addition of the amount toward arrearages does not leave the party at an income  
2 below the poverty line established under 42 USC 9902 (2).

3 **SECTION 3.** 767.303 (1) of the statutes is amended to read:

4 767.303 (1) If a person fails to pay a payment ordered for support under s.  
5 767.077, support under s. 767.08, child support or family support under s. 767.23,  
6 child support under s. 767.25, family support under s. 767.261, revised child or  
7 family support under s. 767.32 or 767.321, child support under s. 767.458 (3), child  
8 support under s. 767.477, child support under s. 767.51, child support under s. 767.62  
9 (4), child support under ch. 769, or child support under s. 948.22 (7), the payment is  
10 90 or more days past due, and the court finds that the person has the ability to pay  
11 the amount ordered, the court may suspend the person's operating privilege, as  
12 defined in s. 340.01 (40), until the person pays all arrearages in full or makes  
13 payment arrangements that are satisfactory to the court, except that the suspension  
14 period may not exceed 2 years. If otherwise eligible, the person is eligible for an  
15 occupational license under s. 343.10 at any time.

16 **SECTION 4.** 767.321 of the statutes is created to read:

17 **767.321 Revision of child or family support for a payer called to active**  
18 **military duty. (1) REQUIREMENT; AMOUNT OF REVISION.** Notwithstanding s. 767.32,  
19 if a member of the national guard or of a reserve unit of the U.S. armed forces is  
20 obligated to pay child or family support and is called into active duty in the U.S.  
21 armed forces, upon a motion and supporting income information filed as provided in  
22 this section and after a hearing, the court or circuit court commissioner shall revise  
23 the child or family support to an amount that bears the same proportion to the child  
24 or family support amount that the payer is obligated to pay when the payer is called

1 into active duty as the payer's income while on active duty bears to the payer's  
2 income while not on active duty.

3 (2) PROCEDURE. (a) *Filing of motion and income information.* At any time after  
4 being ordered to active service in the U.S. armed forces but before being discharged  
5 from active duty, the payer may file, and if so shall serve copies on the payee and the  
6 county child support agency under s. 59.53 (5), all of the following:

7 1. A motion to revise the amount of child or family support that the payer is  
8 obligated to pay.

9 2. An affidavit signed by the payer stating all amounts and sources of the  
10 payer's income while not on active duty and all amounts and sources of the payer's  
11 income, other than military pay, while the payer is on active duty.

12 3. If available, a copy of the payer's defense finance and accounting service form  
13 702, showing the payer's military pay.

14 (b) *Separate filing of military pay form.* If a copy of the form specified in par.  
15 (a) 3. is not available when the motion is filed under par. (a), as soon as practicable  
16 after filing the motion the payer shall file, and send to the payee and the county child  
17 support agency under s. 59.53 (5), a copy of his or her defense finance and accounting  
18 service form 702, showing his or her military pay. The copy of form 702 may be sent  
19 to the court for filing by facsimile transmission or electronic mail.

20 (c) *Hearing.* The court or circuit court commissioner shall schedule a hearing  
21 to be held as soon as possible after the motion under par. (a) is filed. The court shall  
22 allow the payer to participate in the hearing by telephone, interactive video and  
23 audio transmission, or other live interactive communication if the payer's  
24 attendance is impossible because he or she has begun to serve on active duty. If, due  
25 to the nature of the payer's active service, it is impossible for him or her to participate

1 in the hearing as scheduled, the court shall grant a stay of the hearing until the payer  
2 is able to participate.

3 (d) *Issuance of order.* 1. After all of the income information required under pars.  
4 (a) and (b) has been received and filed, and after a hearing has been held, the court  
5 or circuit court commissioner shall issue an order revising the child or family support  
6 that the payer is obligated to pay to the amount specified in sub. (1). The order also  
7 shall require the payer to notify the department and the county child support agency  
8 under s. 59.53 (5) in the county in which the order is issued of the date on which the  
9 payer is discharged from active duty.

10 2. The revision shall be effective as of the date on which the payee received  
11 notice of the motion or as of the date on which the payer begins to serve on active duty,  
12 whichever is later. Only if a payer is unable to participate in the hearing before he  
13 or she is discharged from active duty may the court issue an order under this  
14 paragraph after the payer is discharged.

15 (3) MOTION AFTER DISCHARGE. After the payer is discharged from active duty,  
16 any party may file a petition, motion, or order to show cause under s. 767.32 to revise  
17 the amount of child or family support that the payer is obligated to pay while not on  
18 active duty.

19 (4) PROHIBITION ON SUPPORT ENFORCEMENT. (a) *Definition.* In this subsection,  
20 “child or family support enforcement activities” does not include income withholding  
21 under s. 767.265, except that “child support enforcement activities” includes  
22 income-withholding for any arrearages that may accrue under an order under sub.  
23 (2) (d).

24 (b) *Six-month suspension.* Except as provided in par. (c), if the court or court  
25 commissioner issues an order under sub. (2) (d) revising the amount of child or family

1 support that a payer is obligated to pay, the department and a county child support  
2 agency under s. 59.53 (5) are prohibited from conducting any child or family support  
3 enforcement activities with respect to the payer for a period beginning on the date  
4 on which the order is issued under sub. (2) (d) and ending on a date that is 6 months  
5 after the date on which the order was issued.

6 (c) *Extension of suspension.* If a payer for whom an order was issued under sub.  
7 (2) (d) provides to the county child support agency in the county in which the order  
8 was issued satisfactory evidence that, on the date on which support enforcement  
9 activities may be commenced under par. (b), the payer is on active duty or has been  
10 discharged from active duty for less than 90 days, the county child support agency  
11 shall extend the time during which the department and a county child support  
12 agency under s. 59.53 (5) are prohibited from conducting support enforcement  
13 activities with respect to the payer. The time under par. (b) may be extended for a  
14 payer any number of times, as appropriate, and for up to 6 months each time.

15 (d) *Limit on suspension.* Notwithstanding pars. (b) and (c), in no event may the  
16 department or a county child support agency under s. 59.53 (5) be prohibited from  
17 conducting support enforcement activities with respect to a payer for whom an order  
18 was issued under sub. (2) (d) for more than 90 days after the payer is discharged from  
19 active duty in the U.S. armed forces.

20 **SECTION 5.** 767.33 (5) (a) of the statutes is amended to read:

21 767.33 (5) (a) Nothing in this section affects a party's right to file at any time  
22 a motion, petition, or order to show cause under s. 767.32 or a motion under s. 767.321  
23 for revision of a judgment or order with respect to an amount of child or family  
24 support.

25 **SECTION 6.** 767.51 (6) of the statutes is amended to read:

